

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY JOHN COMMAND,

Plaintiff,

v.

MARCIA KAY-BRINK COMMAND,

Defendant.

Case No. 1:19-cv-75

HON. JANET T. NEFF

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OPINION AND ORDER

Defendant filed a notice of removal purporting to remove this divorce matter from the 20th Circuit Court for the County of Ottawa, Michigan (ECF No. 1). Pursuant to 28 U.S.C. § 636(b)(1)(B), the Magistrate Judge issued a Report and Recommendation, recommending that this action be dismissed for lack of subject matter jurisdiction (ECF No. 7). The matter is presently before the Court on Defendant's Objection to the Report and Recommendation (ECF No. 9). In accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. Defendant has also since filed several motions requesting injunctive relief (ECF Nos. 11, 12 & 15) as well as a motion requesting a grand jury (ECF No. 13). For the following reasons, the Court denies the Objection, adopts the Report and Recommendation, and denies the motions as moot.

Defendant first generally objects to the referral of this case to the Magistrate Judge because she did not consent to the referral (Obj., ECF No. 9 at PageID.174-178, 194-196). Defendant's

objection lacks merit. District judges are permitted to refer dispositive matters to magistrate judges to issue proposed findings of fact and recommendations, as occurred in this case. *See* 28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b)(1). Consent from the parties is not required for a Court to refer a matter to a magistrate judge under § 636(b)(1).

Second, Defendant generally objects to the Magistrate Judge’s jurisdictional analysis. The Magistrate Judge determined that it is “clear that Defendant is seeking to have this Court interfere with an on-going state court divorce action” and that “[a federal court] has no jurisdiction to hear this matter” (ECF No. 7 at PageID.165). The Magistrate Judge stated that “[u]nlike state courts, which are courts of general jurisdiction, the federal courts are courts of limited jurisdiction and do not, therefore, possess jurisdiction over matters involving the issuance of a divorce, alimony, or child custody” (*id.*, citing, *e.g.*, *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992)). In her Objection, Defendant asserts, in pertinent part, that she “rightfully removed” this matter and that “[t]he Federal Court does ... have jurisdiction and an Obligation to Hear Federal Rights Violations” (Obj., ECF No. 9 at PageID.178-193). Defendant’s conclusory statements demonstrate no error in the Magistrate Judge’s analysis.

Absent jurisdiction, this Court has no basis for taking any action in this case other than dismissing and remanding the matter to the court from which it was removed. *See* 28 U.S.C. § 1447(c) (instructing that “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded”). Accordingly:

IT IS HEREBY ORDERED that the Objection (ECF No. 9) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 7) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that this action (ECF No. 1) is DISMISSED for lack of subject matter jurisdiction and REMANDED to the 20th Circuit Court for the County of Ottawa, Michigan.

IT IS FURTHER ORDERED that Defendant's pending motions (ECF Nos. 11, 12, 13 & 15) are DENIED as moot based on the lack of subject matter jurisdiction.

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. § 1447(c), that the Clerk's Office is directed to mail a certified copy of this Opinion and Order to the state court clerk.

Dated: December 30, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge